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WHEN IS A TAX NOT A TAX BUT THE CONDITION OF A LICENSE TO DO BUSINESS?

The riddle propounded in the above query, which the Supreme Court has recently declared to be so easy of solution as to need no "particular analysis," is sufficiently puzzling to some lawyers, who, like the writer, are not adept at solving riddles, to demand some word of explanation if not a complete analysis.

In the recent case of American Manufacturing Co. v. City of St. Louis, 39 Sup. Ct. Rep. 522, the court holds that a Merchants' License Tax imposed by the City of St. Louis on all merchants and manufacturers, calculated upon the total amount of all sales whether within or without the state, is not a tax on interstate commerce for the reason that the purpose and effect of the tax is merely to set a price for doing business in the city; and the fact that the amount of the tax is based on the amount of annual sales, is not objectionable but rather affords a just and equitable method of assessing the tax. On this point the court said:

"No tax imposed upon any sales of goods by plaintiff in error except goods manufactured by it in St. Louis under a license conditioned for the payment of a tax upon the amount of the sales when the goods should come to be sold. The tax is computed according to the amount of the sales of such manufactured goods, irrespective of whether they be sold within or without the state, in one kind of commerce or another; and payment of the tax is not made a condition of selling goods in interstate or in other commerce, but only of continuing the manfacture of goods in the city of St. Louis. There is no doubt of the power of the state, or of the city acting under its authority, to impose a license tax in the nature of an excise upon the conduct of a manufacturing business in the city. Unless some particular interference with federal right be shown, the states are free to lay privilege and occupation taxes. Clark v. Titusville, 184 U. S. 329, 22 Sup. Ct. 382, 46 L. Ed. 569; St. Louis v. United Railways Co., 210 U. S. 266, 276, 28 Sup. Ct. 630, 52 L. Ed. 1054.

This argument, on its face, appears simple, clear and conclusive. The only element of any doubt or uncertainty is in connection with the method of computing the tax. No arbitrary amount is fixed for doing business but an amount which varies with the amount of goods sold. The tax is measured by the amount of sales in interstate as well as intrastate commerce. And it was this method of measuring an otherwise valid tax by the amount of sales in foreign or interstate commerce which constrained the same court to hold invalid the Wholesale Vendors' License Tax of Pennsylvania. Crew Levick Co. v. Pennsylvania, 245 U. S. 292, 38 Sup. Ct. 126. Now which decision is right? If both are right, as the court contends, what is the distinction?

In the Crew Levick case the court considered a tax imposed by the state of Pennsylvania on wholesale vendors, the amount of which was in proportion to the gross receipts from merchandise shipped in interstate and intrastate commerce. The method of measuring the tax by the amount of sales of goods shipped in interstate commerce was held to be objectionable, the court saying: "No question is made as to the validity of the small fixed tax of $3 imposed upon wholesale vendors doing business within the state in both internal and foreign commerce; but the additional imposition of a *percentage* upon each dollar of the gross transactions in foreign commerce seems to us to be, by its necessary effect, a tax upon such commerce."

The opinion in the Crew Levick case, itself a comparatively recent decision, had the effect of throwing a monkey wrench into the taxing machinery of many of our larger cities. More than one city counselor, after careful consideration, had reached the conclusion that this decision

made impossible any tax measured by the amount of sales in interstate commerce. Suits were filed in many places, seeking the return of such taxes paid under protest and in at least one such case the city counselor admitted that he had no defense under the Crew Levick decision.

It appears, therefore, that we are not alone in our inability to fully comprehend the fine distinction that separates the two cases here discussed. In the Crew Levick case the tax was based on the receipts from foreign and interstate commerce; in the American Manufacturing Co. case the tax was based on the amount of sales in foreign or intrastate commerce. The court in the American Manufacturing Co. case evidently construed the tax as an occupation or license tax, the amount of which was determined by the amount of sales; while in the Crew Levick case, the tax was regarded as a direct burden on the receipts from foreign commerce, probably because it was imposed on wholesale vendors engaged in "exporting" merchandise. The court in the Crew Levick case distinctly held that the Pennsylvania tax on wholesale vendors was not "an occupation tax except as it imposed upon the very carrying on of the business of exporting merchandise." It is hard to believe that the court is trying to draw any distinction between "wholesale vendors" and "manufacturers," or because the former are almost exclusively engaged in export trade. For it is well known that all big business today goes beyond state lines and the big shoe manufacturers of St. Louis send more than two-thirds of their product into interstate and foreign commerce.

It seems to us that the Supreme Court should be more considerate of the obtuseness of those lawyers who have openly declared their inability to see the distinction between these two cases which, to the court, seems so obvious. Lawyers who are expected to apply the *principle* of a decision to subsequent facts are entitled to an analysis of the reasons which distinguish two cases which to the ordinary mind are controlled by the same principle. In more than one recent decision of the Supreme Court we have observed a turning away from older conflicting decisions without overruling or distinguishing such decisions and in some instances without even mentioning such cases by name. This indicates a tendency on the part of the court either to shirk its duty to preserve the unity and the logic of the law or a humiliating confession that it does not wish to acknowledge its own mistakes. It leaves out upon the sea of litigation these derelict decisions, which are an ever present menace to even the most careful and experienced pilot of the legal seas.

NOTES OF IMPORTANT DECISIONS.

IS AN AMERICAN-BORN WIFE OF AN AUSTRIAN RESIDING IN THIS COUNTRY AN ALIEN ENEMY?—In New York, as in other states, an alien enemy cannot inherit real estate. This law has just received a hard test in the recent case of Elizabeth Hughes v. Sarah Techt (June, 1919), App. Div. Supreme Court, 61 N. Y. L. J. 1339, and has failed under the test, proving again the truth of the adage that "hard cases make bad law." It must be admitted, however, that the "bad law" announced by the court led to a result that appeals to every instinct of justice and raises again the much disputed question, whether it is the duty of the court to adhere strictly to the letter of the law or to do justice in spite of the logical application of a statute under the rule that such a meaning was not within the intention of the legislature at the time of its enactment.

Plaintiff and defendant are sisters, apparently without the trace of sisterly affection. They are American-born of American parents. Just before the great war deluged the world in blood, Sarah married Frederick E. Techt, a citizen of Austria, living in this country. Techt had taken out his first papers, but the outbreak of the war with Austria prevented him from becoming a citizen. After the declaration of war with Austria, the father of the plaintiff and defendant died, leaving his property in equal shares to his two daughters. The executor decided to divide the income of

the real estate between the two daughters, but Elizabeth objected and brought suit to have her sister barred from any right of inheritance in the father's estate, on the ground that she was an alien enemy and therefore incapable of taking an inheritance in real property in New York.

The court admitted the strength of plaintiff's contention, but attempted to show that defendant in this case was not an alien enemy, but an alien friend, because of her own known views and loyalty to this country, as well as her exemplary conduct during the course of the war. Under the statute an alien friend could take a devise.

Both law and logic are clearly against the court's contention. In the first place, an American woman who marries an alien, becomes an alien, without regard to whether she remains in this country or not. (34 U. S. St., at L. 1228, c 2534, § 3.) Here is where we believe will be found the cause of the injustice of the present case. This statute is unjust. An American woman who marries an alien and prevails upon her husband to live here or who refuses to reside abroad, ought not to be held constructively to have lost her American citizenship. This rule is a relic of the obsolete common law doctrine of the unity of the marriage relation, which has long since been discarded by the Married Women's Acts, which have adopted in lieu thereof the civil law doctrine of the separate identity of husband and wife. Previous to this statute it had been held that a marriage to an alien would not divest a woman of her citizenship unless she removed from the country. Shanks v. Dupont, 3 Pet. (U. S.) 242; Wallenburg v. R. R. Co., 159 Fed. 217; Ruckgaher v. Moore, 104 Fed. 947. But under the statute quoted, the American woman who marries a foreigner loses her citizenship, irrespective of where she resides. Mackenzie v. Hare, 165 Cal. 776, 239 U. S. 299, 36 Sup. Ct. 106, Ann. Cas. 1916E, 645.

It is difficult to follow the court's argument that a person may owe allegiance to a belligerent nation and still be a "friendly" alien. The court seems to regard the term "friendly" as applying to the conduct of the individual alien, whereas it must be referred to the attitude of the nation of which the alien is a citizen. In 2 Corp. Jur. 1043, abundant authority is cited to the following distinction: "Alien friends of a country are those foreigners whose country is at peace with it; alien enemies of a country are those foreigners whose country is at war with it." The good conduct of an alien who is a citizen of a country with which the United States is at war cannot possibly make him a friendly alien in the legal sense of the term. But in spite of the fact that the court's argument is bad law, one cannot help sympathizing with the court's determined effort to uphold the defendant's right to a share in her father's estate. The court said:

"The injustice of visiting upon the innocent the consequences of acts for which they are in no way responsible is demonstrated by the present case. Here is an American-born woman, loyal and law-abiding, who through statutory rule has acquired the political status of her foreign-born husband, who himself is a resident, has declared his intention of becoming a citizen of this country, and is likewise loyal and law-abiding. Her father dies intestate, and normally she would inherit half of his real property. But because ten days earlier war had been declared between the country of her birth and residence and that of her husband's birth, it is sought to declare her an alien enemy and deprive her of her birthright, to benefit her sister. Peace will soon be declared with Austria and she will once again, even under plaintiff's contention, become an alien friend, until her husband can become an American citizen, when she will be restored to American citizenship. But her rights could never be restored to her and her share of her father's estate could never again be hers. Such a result is abhorrent to every idea of justice and equity, and th help of the courts should not be given to accomplish it."

LAW VERSUS DIPLOMACY IN THE PROPOSED COVENANT OF THE LEAGUE OF NATIONS.*

There are many topics which would be profitable for discussion among the brethren of the Bar, but at the present moment one great document must be of paramount interest in the minds of all thinking men—the attempt to establish something more nearly akin to a World Constitution than has yet been seen; the attempt to codify the concrete fruits of superb victory after four years of gigantic conflict constitutes an event in world history which must overshadow all else.

It is for this reason that I am tempted to talk to you and with you of the proposed

*Annual Address before the Bar Association of the State of Virginia, delivered at Richmond, May 17, 1919, by Frederic R. Coudert.

covenant of the League of Nations, in the framing of which the United States through its representatives has taken so leading and so honorable a part.

To lawyers as natural leaders in our American communities this document must be the subject of intense study: nothing rivalling it in importance has been before the Bar or the public for consideration since the adoption of the Constitution. I know that the project is fraught with difficulties proportionate to its magnitude. I realize that it is impossible to find an absolute and final solution to all or perhaps to any of the problems involved. Thinking men must endeavor to find the methods which may best serve to adjust the great problems of world politics, both those created, and those disclosed, by the war. We are all thinking of these problems; no one may honestly be said to have thought them through completely, but every lawyer, possessed of an open-minded desire to serve the greatest of causes, may be able to contribute something to the elucidation and ultimate solution of those complex problems with which the Peace Conference is now confronted.

This must be my only excuse for giving you my personal views regarding some of the major questions connected with or underlying the great attempt to create a better international situation, one calculated to supersede that existing prior to the war in which the relationship between nations was so accidental, so casual and, from the legal standpoint, of so fragile a nature.

I.

That the League is the result of the logic of events rather than of the will of statesmen or of the theories of political philosophers is evident. Nationalism, in many respects a beneficent principle, is also in many cases a disruptive force. It succeeded to and replaced those traditions of European unity embodied in the concept of the Roman Imperium. The national movement slowly developing through the Eighteenth Century and breaking out with fury during the French Revolution, led, like the Reformation, to a quarter of a century of war. Present conditions in Europe tend to indefinite warfare in the attempt to realize national aspirations aroused to fever heat in the great struggle. Such warfare can only be avoided by co-operative action upon the part of the great nations. Necessary self-interest at a time of continuing peril dictates a permanent League of Nations as in similar fashion the temporary union of free democratic peoples was essential to repel the assault of Prussianism upon law and liberty.

Leading statesmen throughout the world have, since the beginning of the great war, been alive to the necessity of some reorganization in the relations between the leading nations of the world.

Mr. Herbert Asquith, the then Prime Minister of England, speaking in the early part of August, 1914, referring to the violation of the Treaty of 1839 concerning Belgian neutrality, and explaining the necessity for ranging Great Britain against this attack upon the foundations of public right and morality said:

"It means (this public right) first and foremost, the clearing of the ground by the definite repudiation of militarism as the governing factor in the relation of states and of the future moulding of the European world. It means next, that room must be found and kept for the independent existence and the free development of the smaller nationalities; * * * they must be recognized as having as good a title as their more powerful neighbors, more powerful in strength and wealth—exactly as good a title to a place in the sun. And it means finally, or it ought to mean, perhaps by slow anl gradual process, *substitution for force, for the clashing of competing ambitions, for groupings and alliances for all these things of a real European partnership based on a recognition of equal rights, and established and enforced by a common will.*"

Among the civilized nations of the world, common interest in the maintenance of international law has long been perceived by the great publicists as well as by enlightened

statesmen. Vattel, not only a great authority on international law, but one whose work contributed largely to its upbuilding, said in 1758:

"If, then, there should be found a restless and unprincipled nation, ever ready to do harm to others, to thwart their purposes, to stir up civil strife among their citizens, there is no doubt but that all the others would have the right to unite together, to discipline it, and even to disable it from doing further harm."[1]

"Nations which are always ready to take up arms, when they hope to gain something thereby, are unjust plunderers; but those who appear to relish the horrors of war, who wage it on all sides without reason or pretext, and even without other motive than their savage inclinations, are monsters, and unworthy the name of men. They should be regarded as enemies to the human race, just as in civil society persons who follow murder and arson as a profession commit a crime not only against the individuals who are victims of their lawlessness, but against the state of which they are declared enemies. Other nations are justified in uniting together as a body, with the object of punishing, and even of exterminating such savage people. *Of that character are the various German tribes* of whom Tacitus speaks."[2]

II.

The peoples of the world today instinctively realize the necessity of attempting some system of organization among the nations which may tend to prevent the recurrence of another general war with its possibilities of the very destruction of civilization itself. At this moment, when the great war is over, some twenty-three little wars are raging. Never was the world more troubled morally, economically and politically.

Two powerful forces are now and have in increasing measure during the last hundred years, been at work. That which makes for national self-consciousness and that which aims at a wider organization of humanity. They are the two great dynamic forces of world politics today.

(1) Book 11, Ch. Lv., § 53.
(2) Book 111, Ch. 111, § 34.

Nationality must be recognized and its rights asserted and maintained not by an appeal to force but to the Association of Nations which, having admitted in principle the justice of those claims, is now creating a mechanism for overcoming the difficulties incident to their just application.

The principle of nationality does not necessarily make for peace. On the contrary, it has been productive rather of wars; some just and others unjust. It was invoked by Bismarck in his assaults upon Austria and France successively. It is not a principle absolute in its application, but rather one which ideally should be applied where this can be done without causing evils greater than those existing. Abstract principles applied regardless of concrete results have led to untold disaster. The crimes committed in the name of liberty and religion are among the saddest records to be found in the history of man. Nationality, however, represents a very real force for good, and one that must be adequately recognized and dealt with if any hope is to be entertained of a long peace. Mr. Lecky, the erudite and wise historian and philosopher, has very felicitously expressed the situation:

"Within certain limits, the doctrine of nationalities undoubtedly represents a real and considerable progress in human affairs. The best, the truest, the most solid basis on which the peace of the civilized world can rest is the free consent of the great masses of its population to the form of government under which they live. The increased recognition of this fact, the increased sensitiveness of the European conscience to the iniquity of destroying wantonly the independence of a civilized nation, or maintaining one civilized nation under the yoke of another, is a genuine sign of moral progress. At the same time there can, I think, be little question that the doctrine of nationalities has assumed forms and been pushed to extremes which make it a great danger to the peace of the world. It becomes the readiest weapon in the hands both of a conqueror and of a revolutionist, and, by discrediting the force of all international treaties, deepening lines of division, and introducing elements of anarchy

and rebellion into most great nations, it threatens the most valuable elements of our civilization."[3]

That the right of nationalities is not the absolute unlimited political principle which some of its foremost advocates proclaimed is illustrated in our own history.

Eminent foreigners found it difficult to understand upon what principle the coercive powers of the national government during the American Civil War were employed in subduing the peoples of a territory who desired to be completely independent.

The historians Grote and Goldwin Smith both asserted that there were two communities opposed to each other in social and political structure, in character, sentiment and interest, which, though yoked together by the Union were not united and that coercion by the one of the other was at variance with American principles of self-government.

Wendell Philips, commenting upon Goldwin Smith's remarks, said:

"Goldwin Smith hit the mark. Two communities radically different in social structure and political requirements have been clamped together in ill-assorted, uneasy, contentious and immoral union. At length, in the course of nature, they fell asunder, and formed two separate nations; the stronger of which proceeded to attack, conquer and re-annex the weaker. This was the simple fact. The nation is the spiritual principle, the resultant of profound applications of history, a spiritual family in a group determined by the configuration of the soil."

This is illustrative of the difficulties and dangers met in applying inflexible principles to actual situations, such as that which exists in Ireland today. However logical the solution, it may be wholly unworkable, and I believe that the people of the United States are today rather united in the sentiment that the logic, which to Grote, Goldwin Smith and Wendell Philips was so clear, did not determine the true solution of the question, but that a greater nation emerged from a conflict which could not properly be determined by the application of any such general principle.

It is not always easy to say what constitutes a nation, but it has been well said that "the memory of glorious deeds in the past, a common will in the present; to have performed great actions in unity, and to wish to perform them again, these are the essential conditions for being a people. Men love in proportion to the sacrifices they have made; to the evils they have suffered; they love the house that they have built, and that they have transmitted."

The fundamental error of the Congress of Vienna, which reorganized European policy in 1815, was in its unwillingness or inability to measure this force of national consciousness which was even then becoming a dominant factor in European politics. Yet, despite this fundamental misapprehension, and even though the confederacy there created was dominated by dynastic rather than popular interests, the Congress of Vienna nevertheless ushered in a longer period of peace than had been seen in Europe since the disruption of the Roman Empire in the West.

The great historian of European diplomacy during the French Revolution says:

"The treaties of Vienna determined the frontier of the states in Europe; they were signed by all the great powers which placed them in their collective guarantee. They provided congresses as a normal institution destined to prevent and to compose, under their arbitrament and hegemony, the differences between states and nations. This institution functioned from 1815 to 1833. However incomplete may appear the conception, and however empiric, arbitrary, and even abusive were certain of its applications, the Congress of Vienna, nevertheless, provided for Europe the most fruitful period of peace which she has ever enjoyed. It was, perhaps, but a scaffolding; but the diplomats never at any time constructed upon more solid foundations a better ordered edifice, and never accomplished a more beneficent work for civilization."[4]

(3) Democracy and Liberty, vol. 1, page 479.

(4) Europe and the French Revolution, by A. Sorel, vol. 1, page 10.

In 1815, as today, nations were weary of war, and welcomed the call of humanity for an organization intended to create some instrument for the preservation of peace. The work of the diplomats of that day, while much decried in later years, was of substantial value.

III.

The League of Nations has been injured by its more enthusiastic adherents who, in declaring that it will end war and inaugurate the millennium, play into the hands of its enemies.

Since the days of Plato men have dreamed of an ideal state, and of a superstate. After the Treaty of Utrecht in 1715, as after the Battle of Waterloo, and the Congress of Vienna a century later, men have longed for peace. Perpetual peace for ages to come can be scarcely more than a dream or an aspiration. It must not be forgotten that peace is only desirable if based upon justice. The realization of the Prussian ideal would have led to ultimate peace, but one spelling complete subjection to alien rule, and a despotism of iron consecrated by a policy of blood.

The purpose of statesmen in Paris today is to construct an organization upon principles which will permit of the settlement of conflicting national aims, ambitions, and aspirations upon a basis compatible with the dictates of justice as recognized by the principles and practices of civilized peoples. In order to accomplish some sort of federation a general alliance is necessary as a working principle, under which the nations may maintain their national existence without necessary recourse to war. This principle has made America what it is; its application can alone save Europe from an indefinite vista of conflict.

Fifty years ago one of France's leading thinkers, a man whom the late Lord Acton, England's leading historical student, characterized as the most important intellectual force in France, Monsieur Ernest Renan, said, speaking when France was in the grip of the Germans in 1870:

"The principle of independent nationalities is not one calculated, as many think, to deliver the human race from the scourge of war; on the contrary, I have always feared that the principle of the right of nationalities, substituted for the gentle and paternal symbol of legitimacy, would cause the conflict of nations to degenerate into an extermination of races and drive from international law those conventional modifications and civilities which were permitted by the little political and dynastic wars of former years. We shall see the end of war only when to the principle of nationality is added that principle which is its corrective—that of a European federation superior to all nationalities; when problems of democracy, the counterpoint of the questions of mere politics and diplomacy, will resume their importance."

And again in the same article, Renan added:

"On the whole, the immense majority of the human race has a horror of war; ideas of kindness, of justice, of goodness, will more and more conquer the world. The bellicose spirit no longer lives, except among professional soldiers in the nobility of Northern Germany and in Russia. Democracy does not want and does not understand war. *The progress of democracy will be the end of the reign of those men of iron—survivals from another age—which our country has witnessed with terror coming out of the bowels of the old Germanic world. Whatever may be the issue of this war, that party will be vanquished in Germany. Democracy has numbered its days.* I have certain apprehensions regarding some tendencies of democracy, as I have always said with sincerity, but surely if democracy can limit itself to ridding the human race of those who for the satisfaction of their vanities and their hates cause the massacre of millions of men, it will have my full approval and sympathetic gratitude."

IV.

The pivot upon which the League of Nations must mainly revolve is the solidarity of the English speaking commonwealths.

With France we should always have close, sympathetic co-operative relations. She was ever our friend and the only ally in American history until the present time; the memory of common sacrifice in the war for independence of 1776, as in the great

war for independence today, has created a relationship of reciprocal admiration and friendship which appears as a unique phenomenon in history.

With Great Britain the common bond of lineage and law has been obscured by conflicts of interest and past misunderstandings. No greater task devolves upon the American citizen today than to strive for good fellowship with those who have the same language, the same common law, kindred institutions, a common consciousness of right and wrong, and whose combined power in men and resources could defy militant aggression from almost any combination of powers seeking world domination by force.

That most illustrious son of Virginia, the author of the Declaration of Independence, Thomas Jefferson, foresaw the value to this nation and to world peace, of an understanding between the English speaking peoples. Writing in the twilight of his life, and from the loftiest standpoint of a patriotism which could be influenced by no worldly ambitions, he said in a letter to James Monroe, October 24, 1823:

"Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle in Cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and peculiarly her own. She should, therefore, have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavors should surely be to make our hemisphere that of freedom. One nation, most of all, could disturb us in this pursuit; she now offers to lead, aid and accompany us in it. By acceding to her proposition, we detach her from the band of despots, bring her mighty weight into the scale of free government, and emancipate at one stroke a whole continent, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of any one, or all on earth; *and with her on our side we need not fear the whole world.* With her then we should the most sedulously nourish a cordial friendship; *and nothing would tend more to knit our affections than to be fighting once more side by side in the same cause.* Not that I would purchase even her amity at the price of taking part in her wars. But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and to establish the American system of ousting from our land all forign nations, of never permitting the powers of Europe to intermeddle with the affairs of our nation. It is to maintain our own principle, not to depart from it. And if to facilitate this, we can effect a division in the body of the European powers, and draw over to our side its most powerful member, surely we should do it. But I am clearly of Mr. Canning's opinion that it will prevent war, instead of provoking it. With Great Britain withdrawn from their scale and shifted into that of our continents, all Europe combined would not dare to risk war. Nor is the occasion to be slighted, which this proposition offers, of declaring our protest against the atrocious violations of the rights of nations by the interference of anyone in the internal affairs of another, so flagitiously begun by Bonaparte and now continued by the equally lawless alliance, calling itself Holy."

Admiral Mahan, that greatest and wisest of our teachers foresaw in 1912 the impending conflict between England and Germany, picturing it as a struggle of two systems in which the United States must side with Great Britain in the fight for freedom against a militant organization designed to fasten its own carefully prepared yoke upon the world.

V.

The United States cannot, and, in fact, never has, lived in isolation. The Seven Year War, as well as those wars incident to the French Revolution and Napoleon, involved the American Colonies and the ent to nothing which threatens world strife, this war has proved. Our undivided duty is to work for the Federal principle and its practical application, through methods which will ever grow by practice and experience more efficient.

Europe as a world apart, whose governments profess principles at variance with ours, and whose policies are directed by

dynastic interests, no longer exists. The march of democracy, the general adoption of the doctrines of the French Revolution coupled with modern methods of transportation and communication have rendered it forever impossible that we should be indifferent to European affairs or a non-participant in matters calculated to disturb the general peace of Europe. The world of today is smaller than the Europe of Napoleon, measured in terms of transportation and communication.

Such a situation must revolutionize conceptions of national policy and doctrines applicable in the early part of the Eighteenth Century but become impossible for the America of today, whose interests, economic, moral and intellectual, are inextricably interwoven with those of the civilized nations of the world. Our statesmen must have the inspiration and patriotism of the fathers, but the knowledge and experience of modern men.

VI.

Thus the success of the League of Nations, already existent, will depend most largely upon American opinion. It is the duty of all interested in bringing about a better world system to educate that opinion and to create a "state of mind" favorable to international co-operation. In order that this may be effected, partisanship must be eliminated, superficial objections answered, erroneous ideas of national sovereignty, mostly "made in Germany," put aside and moral and intellectual approval of the nation marshalled behind its President spokesman in the superb and inspiring attempt in applying the federative principle on a world scale to bring about a better system and a firmer foundation for international law and morality. The doctrine of national sovereignty, never carried so far as by the Prussian state, defeated its own end. A false and unmoral worship of the state eventuating in military ruthlessness, logically ended in inevitable defeat and disintegration.

Our numerous arbitration treaties might equally well be attacked as in derogation of national sovereignty. It appears to be generally forgotten that our thousands of miles of British-American boundary is unfortified and unarmed because in 1818 the United States and Great Britain obligated themselves by treaty (Rush-Bagot) to maintain no military forces upon the Great Lakes. No such peaceful boundary has existed in modern times and during the hundred years that have intervened, no accusation has been made that the statesmen who entered into that arrangement were not good Americans or bartered away national sovereignty. Such a treaty would have scandalized Bismarck or the late Kaiser but was approved by President Monroe and his Secretary of State, John Quincy Adams.

The draft approved by the Conference at Versailles for the constitution of a League of Nations embodies the best attainable in the present condition of opinion.

1. It provides for a permanent organization always ready to function.

2. It makes provision for a taboo or "outlawry" of any nation refusing to abide its unanimous decision.

3. It furnishes machinery by the Mandatory System for solving one of the world's fundamental difficulties—to-wit, the exploitation of undeveloped peoples.

4. The difference between the proposed plan and that of the Hague Conference is, of course, fundamental. The latter assists the established practices of arbitration and aims at some codification of international law, while the proposed League institutes a new world organization, designed to correct the inherent, disruptive tendencies inevitable in the system of theoretically equal, independent and unrelated nations.

The proposed constitution of the League of Nations creates a very real concert of the nations, and realizes the hopes of the more liberal and disinterested statesmen since 1815.

Aside from the confederation of European powers created in 1814 and 1815 other practical attempts have been made to organize the Concert of Europe. Various European Congresses have been held for the purpose of adjusting difficulties tending to war, and to create something in the nature of European legislation. The Congress of Paris (1856) laid down some important rules of international law. The Congress of Berlin, 1878, probably prevented a general European war at that time. It was of this congress that the late Lord Salisbury, hard-headed, practical, trained diplomatist as he was, said:

"I do not take the integrity of the Ottoman Empire for a permanent dogma. It was establishel by the legislature of Europe; it has been modified by them; it has been modified again—what is to be done will be done by the consent of all the powers by which the integrity of Turkey was made part of European law. Much was said, not I think by the Noble Lord (Lord Kimberly) but by those who stood by him in condemnation of the powers of Europe on this occasion. At least it may be said for them that they are representing a continuity of policy *and that they are maintaining the law of Europe as it has been laid down by the only authority competent to create law for Europe.* They have been defied by a state which owes its very existence to the 'Concert of Europe'; if it had not been for the 'Concert of Europe' the Hellenic Kingdom would never have been heard of. I feel it is our duty to sustain the federated action of Europe. I think it has suffered by the somewhat absurd name which has been given it ('The Concert of Europe'), and the intense importance of the fact has been buried under the bad jokes to which the word has given rise, *but the federated action of Europe, if we can maintain this legislature, is our sole hope of escaping from the constant terror and the calamity of war, the constant pressure of the burden of an armed peace, which weigh down the spirits and darken the prospects of any nation in this part of the world—engagements into which it enters must be respected—they must not be thrown over at the mere will of an outside power."*

Recently the position of the United States as an indisputable factor in the settlement of European problems has been recognized, and our delegates attended the conference at Algeciras in 1906, which temporarily settled the difficulties arising out of Germany's attempts to interfere in North Africa. Our delegates also took an active part in both of the Hague Conferences (1899-1907), and co-operated effectively with France and Great Britain in the codification of important chapters in international law.

The present Covenant of the League is therefore no codification of the iridescent dreams of the ideologues, as Napoleon called the spinners of political theories, but it is rather the logical and necessary evolution of processes long under operation hastened by the sentiments and necessities engendered by the great war.

Whatever parochial-minded statesmen may say, whatever passing legislators may desire, the simple fact remains that the United States leads in wealth, in power, in intelligence, among the nations of the world; and that its resources have not been impaired but rather enhanced and developed by the great war. To prevent its playing a leading role in world affairs is, therefore, an impossibility. No war can occur in Europe or in the far East which may not affect the interests or the security of the United States. To blink this fundamental fact may precipitate danger but cannot avoid it. For weal or for woe, our lot must be, and is, cast with the enlightened nations of the world, such as France and Great Britain, who seek to save civilization by substituting methods of adjustment, both legal and diplomatic, for the mere chance arbitrament of war.

VIII.

The Monroe Doctrine announced to the world that the United States would protect the integrity of South American states against foreign aggression. The original League covenant extends that principle of protection to all nations. In order, however, to place beyond doubt the maintenance

of that policy, so largely the keystone of all American foreign policy, the revised covenant expressly excludes from any impairment all "regional understandings like the Monroe Doctrine for securing the maintenance of peace." It must be admitted that the phrase appears felicitous rather than sound and may lead other peoples to make claims that cannot be sanctioned with safety; yet it was from the beginning a misapprehension of the meaning of the Monroe Doctrine to believe it endangered by the proposed plan. Let us for a moment hark back to the sources:

President Monroe defined his own doctrine as follows:

"We owe it, therefore, to candor, and to the amicable relations existing between the United States and those (European) powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of suppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as a manifestation of an unfriendly disposition toward the United States."

One of the latest official exponents of the doctrine, President Theodore Roosevelt, so defined it:

"The Monroe Doctrine should be the cardinal feature of the foreign policy of all the nations in the Americas, as it is of the United States. * * * The Monroe Doctrine is a declaration that there must be no territorial aggrandizement by any non-Americ- world. Still less is it intended to give cover to any aggression by one new world power at the expense of any other. It is simply a step, and a long step, toward assuring the universal peace of the world by securing the possibility of permanent peace on this hemisphere. *During the past century other influences have established the permanence and the independence of the smaller states of Europe. Through the Monroe Doctrine we hope to be able to safeguard like independence and secure like permanence for the lesser among the new world nations.*"

I know of no more completely adequate or satisfactory definition.

Senator Root has lucidly defined the new traditional doctrine as follows:

"It is the substance of the thing to which the nation holds, and that is and always has been, that the safety of the United States demands that American territory shall remain American.

"The Monroe Doctrine does not assert or imply or involve any right on the part of the United States to impair or control the independent sovereignty of any American state. The declaration of Monroe was *that the rights and interests of the United States were involved, in maintaining a condition and the condition to be maintained was the independence of all the American countries.* * * * We frequently see statements that the doctrine has been changed or enlarged; that there is a new or different doctrine since Monroe's time. They are mistaken. There has been no change. One apparent extension of the statement of Monroe was made by President Polk * * * All assertions to the contrary notwithstanding, there has been no other change or enlargement of Monroe's doctrine since it was first promulgated."

The United States has always been ready to give the world an account of its stewardship in countries such as Cuba or South America, where its intervention has been so needful and beneficent. In similar cases in future its action would be strengthened rather than weakened, should it feel itself called upon to accept a world mandate to preserve order and civilization in certain backward countries on this continent. This mandate implied in the specific recognition of the Monroe Doctrine would necessarily devolve upon the United States.

IX.

The revised covenant has, in some degree, corrected a grave defect in the first draft. This was doubtless due, in large measure, to Senator Root, who insisted that

justiciable controversies should be settled by arbitration rather than submission to the mediation of the Executive Council which would mean a diplomatic rather than a legal solution.

The United States for some years past has formulated its view as to what constitutes justiciable matters. In the Arbitration Treaty, 1908, with Great Britain, it is declared that:

ARTICLE I. *"Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy,* shall be referred to the Permanent Court of Arbitration established by the Convention of the 29th of July, 1899, for the pacific settlement of international disputes, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states and do not concern the interests of third parties."

In the Arbitration Convention with Great Britain of 1911, negotiated by the President of the United States, but not ratified, owing to the amendments proposed by the Senate, it was provided in the first article that: "All differences which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at the Hague."

The present draft of the covenant in the revised Article 13, recognizes the distinction between justiciable and non-justiciable matters. Article 13 of the covenant is as follows:

ARTICLE XIII. "The members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact, which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration. For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed upon by the parties to the dispute or stipulated in any convention existing between them.

"The members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

The view embodied in this article may, however, be criticized in that it does not impose obligatory arbitration in case the dispute involves a justiciable question, but leaves it to the parties to submit it to arbitration or to refer it to the mediation of the Council. Such a result was probably necessitated out of deference to the Continental view which does not recognize the distinction between justiciable and non-justiciable matters, as does Anglo-American diplomacy.

The reason for such diversity is the fact that in England and the United States the influence of lawyers or of men whose minds run in legal channels has usually predominated in the discussion of international problems. It has thus been always possible for England and the United States to agree to settle their differences before a legal tribunal. The fact of having a common stock of legal ideas and phraseology has contributed in very great measure to the maintenance of one hundred years of peace among the English-speaking peoples, despite conflicts of interest and prejudices hereditary from Revolutionary days. That the diplomatic situation is thus given precedence over the legal is a disappointment to lawyers; it is to be hoped that the joint influence of America and the British Com-

monwealths may in due time make arbitration compulsory as to justiciable questions.

Many will be chagrined that the covenant does not create a superstate; many will bitterly decry any agreement with European nations for mediation or arbitration in European affairs; extremists in each camp will vent bitter criticism. The answer must be that the present covenant is the best attainable under existing conditions. To have done more would have been to imperil the whole attempt at better international relations; to have done less would have been a relinquishment of hope for the development of relations among nations upon a basis of peace and law — a surrender to either pacifism or fatalism, the negation of the belief in hope for mankind.

The present Constitution of the League, whatever its imperfections, promises the greatest advance yet made by mankind on the long, cruel road from the reign of force and fraud toward that of law and peace.

FREDERIC R. COUDERT.

New York.

MORTGAGE—RIGHTS TO GROWING CROPS.

SANGER BROS. v. HUNSUCKER et al.

212 S. W. 514.

Court of Civil Appeals of Texas. Ft. Worth. March 29, 1919. On Motion for Rehearing, May 10, 1919.

Purchaser, at trustee sale, under deed of trust, was not entitled to crops growing and unmatured at time of sale as against assignees of crop-sharing rental contract.

Suit by Emily Hunsucker and others against Sanger Bros. and others. Judgment for plaintiffs, and named defendants appeal.

CONNER, C. J. On June 30, 1916, Mary S. Taylor, a feme sole, was the owner in her own name and right of 163 acres of land situated in Johnson county. On that day she made, acknowledged and delivered to T. P. Barry, trustee, for the use and benefit of Sanger Bros., a deed of trust covering said land, to secure the payment of certain indebtedness aggregating $4,687.25. The deed conveyed the land, for the purpose stated, together with all improvements thereon and thereafter to be placed thereon, and with all and singular the rights and appurtenances to same belonging to or in any wise appertaining or incident thereto. The conveyance was forthwith duly recorded upon the proper records of Johnson county. On December 1, 1916, Mary S. Taylor entered into a valid rental contract of the premises mentioned with Watters & Sons for one-fourth of the Johnson grass, cotton and cotton seed, after paying the expenses of ginning and baling, and one-third of all other crops. Thereafter, on January 2, 1917, while she yet owned the premises, and while the said Watters & Sons were in the use and occupation thereof, cultivating the land under their said rental contract, the said Mary S. Taylor duly assigned, for a valuable consideration, the rental contract to appellees to secure certain indebtedness for which they sue in this suit. Thereafter, on June 6, 1917, crops of corn, oats and Johnson grass were growing on said premises under the contract Watters & Son had made with Mary S. Taylor, when Sanger Bros. duly caused T. B. Barry to duly execute the trust vested in him by selling the 163 acres of land owned by Mary S. Taylor. Sanger Bros. purchased the land at the trustee sale, and at once entered into possession thereof, made new rental contract with Watters & Sons upon terms the same as Watters & Sons had made with Mary S. Taylor, and thereafter received from Watters & Sons, and appropriated for their own use, the rents specified in the rental contract with Mary S. Taylor.

The circumstances stated gave rise to the present suit, which was instituted by appellees against Mary S. Taylor for the amounts due from her and against Watters & Sons and Sanger Bros. for the value of the rents specified.

The case was tried upon an agreed statement of facts, and judgment, having been rendered in favor of plaintiffs, Sanger Bros. have appealed.

One of the appellants' material contentions is presented by a proposition under the first and second assignments of error. The proposition reads as follows:

"A lease contract made by a mortgagor after the execution and record of a valid mortgage

is subject and subordinate thereto. Foreclosure of said mortgage extinguishes said lease, and the purchaser at foreclosure sales takes the land free from the same, is entitled to immediate possession, and all the rights of user and beneficial enjoyment incident to ownership, and, as a consequence, to all crops unmatured and growing at the date of purchase."

The case of Willis v. Moore, 59 Tex. 628, 46 Am. Rep. 284, and cases following it, seem to be conclusive against appellants' proposition. The question in the case named is thus stated:

"The question for our decision then is, Is the purchaser of mortgaged lands, as against the mortgagor or any person claiming under him by a purchase of the crops, entitled to such crops as were standing ungathered upon the land at the time of his purchase?"

The question, after an elaborate discussion, was answered in the negative. The decision, which is opposed to the holding in England and to some of the other states, is based upon the proposition that in Texas the mortgagee of lands is but a lienholder, and not the owner or holder of the legal title, and that until foreclosure the mortgagor has full title, with right to dispose of the crops. It was particularly said that—

"A mortgagor is entitled to sever in law or fact the crops which stand upon his land at any time prior to the destruction of his title by sale under the mortgage; this results from his ownership and consequent right to the use and profits of the land, and the mortgage is taken with knowledge of that fact."

As we understand the rule of this state to be, not only crops planted, but crops to be planted, and which are thereafter actually planted pursuant to a contract with the owner of the land, may be sold or mortgaged. That is to say, that if a tenant, under a valid contract with the owner of the soil, agrees to pay a crop rent and thereafter actually plants and cultivates the specified crop, the same may be sold or mortgaged even though at the time of the sale or mortgage the crop has not actually been planted. In such case the crop is considered as having a potential existence, and, having such potential existence, it may be assigned or mortgaged before the crop is actually planted, as well as thereafter while growing. See Richardson v. Washington et al., 88 Tex. 339, 31 S. W. 614; Dupree v. McClanahan, 1 White & W. Civ. Cas. Ct. App., § 594 et seq.; Conley v. Nelin, 60 Tex. Civ. App. 395, 128 S. W. 424; Barron v. San Angelo Nat. Bank, 138 S. W. 142.

It is undisputed that appellants had notice of the rental contract between Mary S. Taylor and Watters & Sons and of the assignment thereof to appellees at the time of appellants' purchase under their trust deed. Hence we conclude that by such assignment appellees acquired the full right as against Watters & Sons and appellants to the rents in question, and that the new rental contract entered into between Watters & Sons and appellants was of no effect as against appellees. It is accordingly our judgment that appellants' assignments of error and all propositions thereunder should be overruled and the judgment affirmed.

On Motion for Rehearing.

The counsel for appellants very earnestly insist that we were in error, at least, in holding that the appellees were entitled to recover the cotton replanted after the sale of the land to Sanger Bros. It is contended that our ruling leads to unreasonable results; that in accordance therewith an owner of land who had given a mortgage thereon might lawfully make a rental contract extending through a series of years and thereafter assign such contract, and thus deprive the mortgagee in a large measure of the fruits of his mortgage. Logically this may seem true, but as to this contention we deem it sufficient to say that the case before us presents no such condition. The lease by the landlord here was for but one year, and it will be time enough to determine the supposititious cases when they are presented upon the record. Doubtless, if such a case be presented, some rule of law or equity may be found to prevent injustice. At all events, if we are to be controlled by the cases cited in our original opinion, as we think we must, it seems clear that Mary S. Taylor, the owner of the mortgaged premises involved in this suit, had a clear right to make the rental contract she did with Watters & Sons, and that, having such right, she as clearly could lawfully transfer it with all of its force to appellees. If so, the tenant was liable for the rents as he had contracted for, both as to the growing crops and as to all crops actually planted and maturing for the crop year, and no action on the part of Sanger Bros. or of the tenants could impair, to any extent, appellees' right as assignees of Mrs. Taylor.

NOTE—*Purchase of Crops Grown on Mortgaged Land.*—The principle laid down in Willis v. Moore, 59 Tex. 628,, 46 Am. Rep. 284, referred to in the instant case has been followed in some other states, but denied in others. Among the cases proceeding on this line is that of Sexton v.

Breese, 135 N. Y. 387, 32 N. E. 133, which affirmed 57 Hun. 1, 10 N. Y. Supp. 510.

The statement of this case, as reported in 57 Hun. *supra*, shows that, while a mortgagor was in possession he executed a bill of sale of a growing crop and afterwards he gave to mortgagee an instrument in writing whereby the mortgagee was authorized to take possession of a mortgaged farm and after paying all expenses to apply the net income on the mortgaged indebtedness. There was a controversy between the vendee in the prior bill of sale and the mortgagee as to a crop of wheat which had been sowed at the time it was given. It was ruled that the growing crop was a chattel and subject to sale like other personal property and the mortgagee taking possession by consent of mortgagor gave him no title to the form prior to foreclosure of his security for the payment of his debt. Before that he was confined to receipt of the rents and profits to apply on his indebtedness.

The Court of Appeals in affirming the ruling said among other things, that: "In England growing crops, which were *fructus industriales* * * * have been regarded as chattels quite independent of the land. Any supposed confusion in the decisions, with respect to their relation to the land, arose rather in the consideration of the question of the validity of their transfer by parol, under the statute of frauds, than in any difference in opinion as to their being chattels. Distinctions, of course, were made between growing crops of grain and trees, the fruits of trees and perennial plants. * * * Probably the rights of a third person to the growing crops of grain, under a contract of purchase with the owner, would be annulled by the sale upon the foreclosure of a mortgage of the land, * * * for then the transfer of the title to the mortgaged premises would carry with it to the purchaser a paramount title to the growing crop."

Passing by the question suggested in the last sentence *supra*, I find a case decided by Kansas Supreme Court regarding a question as to the sale of a matured crop after foreclosure of and before sale, under a mortgage. First Nat. Bank v. Beegle, 52 Kan. 709, 35 Pac. 814, 39 Am. St. Rep. 365. It was said: "The contention of plaintiff in error is that, as the corn was standing in the field, unhusked, the title passed to the bank by virtue of the foreclosure sale." But the court said: "When the crops mature they can no longer be regarded as a part of the realty and hence do not pass to the purchaser of the land. As the ripened crop possesses the character of personalty, the fact that it rests upon the land, unsevered, is of little consequence. If the severance of such a crop was at all material, it had in legal effect been severed through the sale by the mortgagor to the plaintiff. The mortgage or sale of a ripened crop at least operates as a constructive severance of the same from the land." It seems to me, that severance ought to cut little figure and even after sale the mortgagor could then take with him such a crop as well as he might any other personal property remaining upon the premises.

Thus, in Allen v. Bryant, 4 Cal. App. 371, 88 Pac. 294, the question was whether after a sale but before taking possession, certain hay passed to purchaser. The Court said: "Prior to the time of the supposed payment it (the hay) had been baled, and from the ordinary course of the seasons and agriculture in the country, it may be assumed that it had been cut, if not baled, prior to the date of the deed and the date of the bill of sale. But, however, this may be, it had been transferred by Bryant to Allen prior to the date of the deed. The hay, therefore, did not pass to Allen by the deed subsequently made to him."

In Cameron v. Gibson, 17 Ont. Rep. 233, it was held that where a mortgagor of land later conveyed it to mortgagee, a chattel mortgagee of the crops took in preference to one holding under mortgage of the land.

But in Wootton v. White, 90 Md. 64, 44 Atl. 1026, 78 Am. St. Rep. 425, it was held that if a crop is growing on mortgaged land, mortgagor cannot, by a bill of sale, defeat mortgagee's right thereto or of his vendee to the crop, in order for the crop to pass to another there must be an actual severance from the land.

It was said: "It will be observed that we are dealing only with the question whether a mortgagor may by a bill of sale constructively sever a growing crop so as to prevent it passing to a purchaser under a foreclosure sale when the sale of the land is made before the crop is actually cut therefrom. * * * There is no hardship in this. If the mortgagor goes on and makes preparations for a crop, he does it with full knowledge that the land with the crop is subject to be sold, if the sale takes place before he severs it. Nor does he lose anything by this, for the crop on the land enhances the price." But this does not seem to protect a purchaser from the mortgagor of the crop, and, it might be that though an unmatured crop passes with the land, yet may not one sell or mortgage potential property, that is to say, mortgage a crop that in course of time will in the course of the seasons mature? Severance seems to me to smack of technicality rather than of substance.

Watson v. Meentee, 59 Mo. App. 387, appears to recognize the influence of the severance idea just as does the Wootton case. So also Rankin v. Kinsey, 7 Ill. App. 215; Loose v. Scharff, 6 Pa. Sup. Ct. 153. And so does Beeckman v. Sikes, 35 Kan. 120, 10 Pac. 592, as to immature unsevered crops.

This matter ought to be settled by statute, and it should be declared that where there is sale by foreclosure of mortgage on land, crops, whether mature or immature, should not pass on any merely technical rule regarding severance. Mortgages are merely security for a debt and the right of mortgagor to manage the property should not be reasoned upon in any way to enhance the value of the mortgaged property, especially where to use same to advantage it may be thought necessary to pledge its industrial products. To say otherwise is in addition a mortgaging of mortgagor's personal services. C.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGGS FOR 1919 —WHEN AND WHERE TO BE HELD.

American—Boston, Mass., September 3, 4 and 5.

Missouri—Kansas City, Mo., October 3 and 4.

Oregon—Portland, November 18 and 19.

Tennessee—Memphis, September 30 and October 1.

GIVING THE SUPREME COURT POWER TO MAKE RULES OF PROCEDURE IN CASES AT LAW.

The Committee on Uniform Judicial Procedure of the American Bar Association has sent the following request to lawyers, a request which we heartily second:

This method is taken of requesting you to write to your Senators and Representatives and those of your acquaintance to urge a prompt report by the Judiciary Committee of the Senate and the passage at this session of S. 1214, just introduced by Senator Kellogg. As you know, the bill vests in the Supreme Court the authority to make rules governing the procedure in cases at law, to the same extent that it already has the power to regulate the procedure in equity, admiralty and bankruptcy. Please read our committee report in the July number of the American Bar Association Journal.

Thomas W. Shelton, Chairman
William Howard Taft
Jacob M. Dickinson
Joseph N. Teal
Frank Irvine.

BOOKS RECEIVED.

The Taxation of Corporations and Personal Income in New York. By Henry M. Powell, of the New York Bar. Revised Edition. New York. Clark Boardman Co., Ltd. 1919. Price $4.00. Review will follow.

HUMOR OF THE LAW.

When the chancery court used to sit in the old Tolsma building, Judge Frazer used to grumble at the cold, and send his clerk, Walter Oldfield, down to tell the janitor to fire up. One day it was excessively cold and Oldfield took down the thermometer that was hanging on the wall, but before he could see the temperature the judge entered the court. Oldfield laid the thermometer down anywhere (it happened to be on the radiator) and jumped to his place. Pretty soon the judge began to growl about the cold and asked for the thermometer. Oldfield picked it off the radiator and laid it down on the bench without saying a word. It registered 126 degrees. The judge glared at it, took off his spectacles, washed them in ice water as was his habit, put them on and took another look. There was practically no change.

"Walter," he said, "take this blamed thing away. It's the biggest liar in court." And he added under his breath, "And that's saying a whole lot."

The late Judge Frazer was a man of the Scotch-Irish type, hard headed, clear thinking and—well, rather difficult to get along with. He had such a very emphatic way of expressing himself that it was often very embarrassing to the person addressed. One day after listening to a case in which a number of medical experts had been examined he thus expressed himself:

"My experience has been that there are three kinds of liars in the world, plain ordinary liars, d—— liars and medical experts."

One of the Associate Justices of the Supreme Court, William R. Day, has four sons, all good lawyers. A while ago it so happened that three of these, Bill, Luther and Rufus, appeared before the Supreme Court, on behalf of clients, within a week. Each time, Justice Day sat in his place, following custom, took no part in passing on the case in which his son was interested.

"See here, Day," suggested one of the Associate Justices, "you're having it pretty easy of late, don't you think? If you only had a few more lawyer sons you wouldn't do any work up here at all."—*Ladies' Home Journal.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Bankruptcy**—Conditional Sale Contract.—A vendor of property under conditional sale contract to one subsequently adjudicated a bankrupt is entitled to reclaim the property.—In re American Steel Supply Syndicate, U. S. D. C., 256 Fed. 876.

2.——Excepted Debt.—Where one who has received a discharge in bankruptcy is sued on a debt existing at time of filing of petition, the introduction of the order of discharge makes out a prima facie defense, and casts the burden on plaintiff to show that because of the nature of the claim failure to give notice, or other statutory reason, the debt sued on was by law excepted from the discharge.—Schweigert-Ewald Lumber Co. v. Baumann, N. D., 172 N. W. 808.

3.——Fraud.—When creditors, objecting to the discharge of a bankrupt, showed that his statement of his firm's financial condition, presented to a lender to induce the loan, was untrue in a material respect, that the bankrupts had obtained money on its credit, and that its untruthfulness related to a subject within the knowledge of the bankrupt, who gave currency to the untruth, they made a prima facie case disentitling him to discharge.—In re Perlmutter, U. S. D. C., 256 Fed. 862.

4.——Impounding Mail.—The postmaster's possession of a bankrupt's mail, which had been impounded pending hearing on a fraud order prepared by the Post Office Department, is an adverse claim, which cannot be disposed of by summary motion.—In re Rice, U. S. D. C., 256 Fed. 858.

5.——Preference.—The intent of a debtor to give a preference and the intent of the creditor to obtain a preference are immaterial, in determining whether a preference was actually obtained.—In re Campion, U. S. D. C., 256 Fed. 902.

6. **Bills and Notes**—Extension.—Where maker of note and mortgage called payee on phone and asked him if he wanted his money, that if he did she would borrow it for him, and he replied that he did not need the money and that maker should not worry herself about it, there was not a definite extension of time of payment.—Graves v. Burch, Wyo., 181 Pac. 354.

7.——Parties.—One who takes a negotiable instrument contracts only with the parties who upon the face of the instrument are bound for its payment, and is presumed to look only to those parties, and not elsewhere.—Donner v. Whitecotton, Mo., 212 S. W. 378.

8. **Brokers**—Notice to Agent.—If plaintiff brokers were not agents of lessee, but were acting for defendant lesor, who had knowledge of and received benefits of services rendered in inducing lessee to lease property, defendant would be liable unless the dealings he had with plaintiffs and the services performed by the latter were not such as would lead a person of ordinary understanding under like circumstances to believe that plaintiffs were acting for defendant and expecting to be paid therefor.—Davis v. Geiger, Mo., 212 S. W. —.

9.——Undisclosed Principal.—A broker, authoritatively representing a known or disclosed principal, as seller of a commodity, not notified, at time of sale, of buyer's purpose to hold him responsible for performance of contract, and not bound by its terms in any form, is not personally liable for any breach thereof.—Hurricane Milling Co. v. Steel & Payne Co., W. Va., 99 S. E. 490.

10. **Burglary**—Recent Possession.—Where a breaking is shown, the recent possession of property that came from the premises entered, if unexplained, may warrant a conviction.—Jefferson v. State, Tex., 212 S. W. 505.

11. **Carriers of Goods**—Forged Bill of Lading.—Where a cotton dealer sold cotton and drew on the buyer, placing the true bills of lading as collateral with a bank, and sending to the purchaser a forged bill of lading, which the latter presented, obtaining the cotton, the buyer should be considered an equitable assignee of the seller, and is entitled, on recovery by bank of judgment against the railroad for conversion, to any balance after payment of secured debt.—Hubbard Bros. & Co. v. Southern Pac. Co., U. S. C. C. A., 256 Fed. 761.

12.——Interstate Railroad.—A provision in a lease of land by an interstate railroad company for a smelter plant site, by which in consideration of the rental, etc., it agreed to do intraplant switching of cars, wholly disconnected from their transportation over its road, free of charge, held not invalid as a device to cover the giving of rebates.—American Smelting & Refining Co. v. Union Pac. R. Co., U. S. C. C. A., 256 Fed. 737.

13. **Carriers of Live Stock**—Bill of Lading.—A provision in a limited liability live stock contract or bill of lading for an interstate shipment, requiring presentation within five days from the time the stock is removed from the car or cars of claim for any loss or damage as a condition to recovery, is valid and controlling as to any liability of carrier arising from beginning to end of the transportation.—Erie R. Co. v. Shuart, U. S. S. C., 39 S. Ct. 519.

14.——Interstate Shipment.—A provision in a through bill of lading issued for the interstate shipment of live stock, barring any action for damages unless suit should be brought within six months after loss occurred, is reasonable and should be enforced. (Per the Chief Justice, Mr. Justice Brandeis, Mr. Justice Holmes, and Mr. Justice Day.)—Texas & P. Ry. Co. v. Leatherwood, U. S. S. C., 39 S. Ct. 517.

15.——Place of Contract.—A case involving a live stock shipping contract executed and fully performed wholly in a particular state is governed and controlled by the laws and decisions of such state.—Strother v. Atchison, T. & S. F. Ry. Co., Mo., 212 S. W. 404.

16. **Carriers of Passengers**—Alighting.—A street railroad company is under the duty of observing whether a passenger has actually alighted before starting the car.—Phoenix Ry. Co. of Arizona v. Beals, Ariz., 181 Pac. 379.

17.——Alighting.—Common carrier of passengers must safely deliver a passenger at his destination, and when train is stopped for that purpose the carrier should allow ample time for

all departing passengers to alight safely before starting the train again.—Atlanta & St. A. B. Ry. Co. v. Kelly, Fla., 82 So. 57.

18.——Contributory Negligence.—Relative to contributory negligence of passenger, injured in alighting from passenger elevator when its floor was several inches below that of the hall, opening of elevator door by operator could be considered as substantial assurance of safety. —Bemis v. Plant, Conn., 106 Atl. 764.

19.——Notice to Conductor.—The general rule is that, in the absence of a rule of the carrier known to the passenger requiring the passenger for a flag station to notify the conductor before arrival at the stipulated destination, no such notice need be given.—Pittsburgh, C., C. & St. L. Ry. Co. v. Boys, Ind., 123 N. E. 482.

20. **Chattel Mortgages**—Crops.—Where a tenant under a valid contract with owner agrees to pay a crop rent and thereafter actually plants and cultivates the specified crop, the crop may be mortgaged even though at the time of the mortgage the crop has not actually been planted.—Sanger Bros. v. Hunsucker, Tex., 212 S. W. 514.

21. **Constitutional Law**—Municipal Corporation.—Municipal corporations are political subdivisions of the state, for the exercising of such governmental powers as may be intrusted to them, the nature and duration of which powers rest in the discretion of the state, and neither their charter nor any law conferring governmental powers constitutes a contract with the state within the meaning of the federal Constitution; therefore though an Oklahoma city gave a gas company a franchise to use the streets and alleys for its pipes, and, pursuant to Rev. Laws 1910, § 593, regulated charges, Laws 1913, c. 93, giving power to regulate rates to the Corporation Commission, and depriving the city of such authority, is not invalid as impairing the obligation of a contract.—City of Pawhuska v. Pawhuska Oil & Gas Co., U. S. S. C., 39 S. Ct. 526.

22.——Vested Right.—No person has a vested right, entitling him to have unchanged the existing rules of law concerning an employer's responsibility for personal injury or death of an employe.—Arizona Copper Co. v. Hammer, U. S. S. C., 39 S. Ct. 553.

23. **Contempt**—Constructive.—A constructive contempt is an act done, not in the presence of the court, but at a distance, which tends to belittle, to degrade, or to obstruct, interrupt, prevent, or embarrass the administration of justice.—State v. Kayser, N. M., 181 Pac. 278.

24. **Contracts**—Offer.—An offer without acceptance is not a contract. Gratuitous promises or propositions to pay money upon condition or upon happening of some event or the doing of some act, or incurring some expense, loss, or legal obligation, become binding as legal and valid contracts upon acceptance and performance of the stipulated condition.—Blanton v. Forrest City Mfg. Co., Ark., 212 S. W. 330.

25.——Rescission.—A contract induced under a misapprehension of law by one party of which the other is aware may be rescinded under Comp. Laws 1913, § 5855.—Hellebust v. Bonde, N. D., 172 N. W. 812.

26.——Restraint of Trade.—An agreement in restraint of trade, which is limited in space or territory, though unlimited in time, is prima facie good.—Sklaroff v. Sklaroff, Pa., 106 Atl. 793.

27. **Corporations**—Charter.—In the absence of statutory or charter restriction, a corporation has inherent power to purchase its own stock. —First Trust Co. v. Illinois Cent. R. Co., U. S. C. C. A., 256 Fed. 830.

28.——**De Facto.**—As between private parties, the right of a de facto corporation to act as a corporation, cannot be questioned. — Grant Chrome Co. v. Marks, Ore., 181 Pac. 345.

29.——Fiduciary Relation.—Where defendant, which controlled the majority of the stock of a corporation, by means of a reorganization scheme prevented minority shareholders from participating in the distribution of the stock of the reorganized corporation, and obtained the whole for itself, relief cannot be denied on the ground that defendant was not guilty of fraud or mismanagement; the relief being based on breach of a fiduciary relation.—Southern Pac. Co. v. Bogret, U. S. S. C., 39 S. Ct. 533.

30.——Negligence.—A corporation cannot escape liability for negligent conduct of a business in which it engages, by showing that it was not authorized to carry on that business. —Panama R. Co. v. Curran, U. S. C. C. A., 256 Fed. 768.

31. **Criminal Law**—Jeopardy.—Jeopardy begins when a respondent is put upon trial before a court of competent jurisdiction, upon an indictment sufficient in form and substance to sustain a conviction; the jury having been impaneled and sworn.—State v. Slorah, Me., 106 Atl. 768.

32.——Motive.—Motive can no more be proved by hearsay evidence than any other fact.— Scruggs v. Commonwealth, Va., 99 S. E. 518.

33.——Remoteness.—An objection to evidence because of remoteness of the fact sought to be proved is without merit, if its admission has any logical tendency to assist court in determining contested issues.—Griswold v. State, Fla., 82 So. 44.

34. **Damages** — Punitive. — Punitive damages are not recoverable as a matter of right, but their allowance rests entirely in the discretion of the jury.—Hurst v. Southern Ry. Co. in Kentucky, Ky., 212 S. W. 461.

35. **Deeds**—Description of Land.—To make a conveyance of lands by deed valid, deed must describe them so certainly that property can be located, and in this sense that is certain and locatable which can be made certain and locatable.—Prewitt v. Wilborn, Ky., 212 S. W. 442.

36. **Divorce**—Community Property. — Divorce dissolves the community, and, unless the parties agree to a division of the community property, it is the duty of the court, in divorce suit, to determine their respective interests.—Milekovich v. Quinn, Cal., 181 Pac. 256.

37.——Insanity.—Where the husband became insane within three months after the desertion, the insanity is a bar to the wife's suit; for since the husband became incapable of forming an intent, and continued desertion depends on continued intention, the time during which he was insane could not be included in computing the statutory period.—Wright v. Wright, Va., 99 S. E. 515.

38. **Easements**—Grant in General Terms.— Generally, if an easement granted in general terms has been located, it cannot be changed without the consent of the other party, and cannot be treated as a shifting one.—Glover v. Falls, Miss., 82 So. 4.

39. **Election of Remedies**—Evidence of.—A fruitless attempt to recover by an unavailing remedy does not constitute an election which will deprive one of his rights properly recoverable by a different and appropriate remedy.— Southern Pac. Co. v. Bogert, U. S. S. C., 39 S. Ct. 533.

40. **Eminent Domain**—Damages.—True measure of damages to property abutting on its public street, from a change in its grade is difference between value of property immediately before and immediately after the street improvement; special or peculiar but not general benefits to property being included in latter value.—Jones v. City of Clarksburg, W. Va., 99 S. E. 484.

41. **Equity**—Complete Relief.—Equity, having jurisdiction of a controversy, can in one proceeding afford complete relief.—Daniel v. Daniel, Wash., 181 Pac. 215.

42.——Laches.—When one relies upon laches as distinguished from the statute of limitations to bar an action, he cannot protect himself by demurrer.—Page v. Cave, Vt., 196 Atl. 774.

43. **Frauds, Statute of**—Part Performance.— Possession by tenant in common to constitute such part performance of his co-tenant's agreement to sell her interest in the common property as to take the contract out of the statute of frauds must result in such a change of relation between the parties as would challenge

the attention of any one seeing the change, and would indicate that some contract has been made.—Le Vee v. Le Vee, Ore., 181 Pac. 351.

44.——Part Performance.—Part performance of an oral contract respecting a transfer of land takes it out of the statute of frauds.—Page v. Cave, Vt., 106 Atl. 774.

45. **Gas**—Confiscatory Rates.—Franchise contracts, fixing rates to be charged for lighting, cannot be revised by the courts because the rates have become noncompensatory, although the municipality reserved the right to revise the rates.—Muscatine Lighting Co. v. City of Muscatine. U. S. D. C., 256 Fed. 929.

46. **Homicide**—Motive.—Proof of motive is not essential to a conviction, but where established tends to strengthen the case for the prosecution, while absence thereof is a circumstance favorable to accused.—Walker v. State, Ark., 212 S. W. 319.

47. **Husband and Wife**—Coverture.—A married woman is estopped in equity from interposing coverture as a defense in cases where she is attempting to enforce a right inconsistent with her previous conduct, upon which the other party has relied.—Per Blair, Woodson and Williams, JJ.—Rauch v. Metz, Mo., 212 S. W. 357.

48.——Husband's Credit.—Where goods are furnished the wife within the state in which husband and wife are residents, the legal effect of the transaction and the capacity of wife to pledge her husband's credit are determined by the law of such state.—Paquin, Limited, v. Westervelt, Conn., 106 Atl. 766.

49.——Separation Agreement. — Separation agreement made after parties had separated and when there was no prospect of reconciliation is valid.—Hughes v. Leonard, Col., 181 Pac. 200.

50. **Insurance** — Accident. — Where plaintiff was injured by dust blowing in his eyes while driving his wagon around a street corner on a spring day, during a high wind, prevalent in West Texas at such times, the cause of his injury was an "accident," being "an unusual effect of a known cause," and he was entitled to recover upon a benefit certificate carrying an accident clause.—Independent Order of Puritans v. Lockhart, Tex., 212 S. W. 559.

51.——Fidelity Bond.—Fidelity bonds issued by a surety company to a bank, in consideration of premiums paid, indemnifying the bank against defalcation of its cashier, are insurance contracts, though such bonds recite that the cashier is principal and the surety company surety, the bonds containing an express obligation running from the cashier to the surety company to reimburse the latter for any loss suffered.—Southern Surety Co. v. Citizens' State Bank of Hempstead, Tex., 212 S. W. 556.

52.——Place of Contract.—A cause of action on a life insurance policy, for the purpose of determining venue, accrues at the place where the insured dies.—Roberts v. American Nat. Assur. Co., Mo., 212 S. W. 390.

53.——Place of Contract.—Where application for a life policy was written and delivered to the insurer's agent in Buffalo, and mailed by the agent to the insurer at Philadelphia, and the first premium was paid at the insurer's office in Buffalo, and the policy sent by mail to insured in Buffalo, the contract of insurance may be considered a New York contract.—Quast v. Fidelity Mut. Life Ins. Co., N. Y., 123 N. E. 494, 226 N. Y. 270.

54. **Judgment**—Collateral Attack.—A judgment based upon an erroneous view of the law is not for that reason void and subject to collateral attack.—Heard v. Vineyard, Tex., 212 S. W. 489.

55.——Res Judicata.—A final judgment rendered on the merits, by a court having jurisdiction of the subject-matter and parties, is conclusive on the rights of the parties and their privies in another suit on the points and matters in issue on the first suit.—Prewitt v. Wilborn, Ky., 212 S. W. 442.

56. **Landlord and Tenant**—Lien.—To render third person liable for loss of landlord's lien by removal of property subject to lien, third person must have notice, actual or constructive, of the lien.—Street v. Treadwell, Ala., 82 So. 28.

57. **Libel and Slander**—Defaming Officer.—Defamatory publications of an officer with respect to his office are actionable per se if untrue.—Arizona Pub. Co. v. Harris, Ariz., 181 Pac. 373.

58.——Publication.—A casualty insurer's writing of a letter to a policy holder, setting out the grounds on which his claim was declined, and its delivery of the letter through its local attorney, the letter not being sealed, but open for the attorney's inspection, was privileged, though the contents of the letter were libelous, and there was no publication.—Sullivan v. Metropolitan Casualty Ins. Co. of New York, U. S. C. C. A., 256 Fed. 726.

59. **Malicious Prosecution**—Probable Cause.—Belief alone, however sincere, is not sufficient to constitute probable cause, for it must be founded on circumstances which make the belief reasonable.—Shea v. Berry, Conn., 106 Atl. 761.

60. **Marriage** — Meretricious Beginning. — Where both parties knew, at the time of their attempted marriage, that the man had a living undivorced wife, their relation, being illegal in its inception, must be presumed, in the absence of contrary proof, to have continued after the death of the legal wife as before; for change from an illegal to legal relation requires more than mere continuance of living together after removal of obstacles to marriage.—Thompson v. Clay, Miss., 82 So. 1.

61. **Master and Servant**—Assumption of Risk. —While the defense of assumption of risk is available under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), it does not apply to extraordinary hazards created by the negligence of a fellow servant.—Fuller v. Oregon-Washington R. & Nav. Co., Ore., 181 Pac. 338.

62.——Wrongful Dismissal.—Where a servant gave his employer to understand that he intended to resign if a request for increase in salary was not granted, he cannot complain that a dismissal at such time was wrongful.—Williams v. Maryland Glass Corporation, Md., 106 Atl. 755.

63. **Mortgages**—Demand.—A previous demand for payment of the debt is not generally necessary to a recovery of attorney's fees provided for in a note or mortgage, where the right to sue thereon has accrued.—Graves v. Burch, Wyo., 181 Pac. 354.

64. **Municipal Corporations**—Artificial Channel.—Landowner who collects surface water into an artificial channel, such as a spout, and discharges it upon a public way, where it freezes and makes use of the way dangerous, efficiently creates a public nuisance, and is liable for resulting damage to a traveler using due care.—Cochran v. Barton, Mass., 123 N. E. 505.

65.——Delegated Power.—A municipal corporation has only such legislative authority as has been expressly or impliedly delegated to it by the Legislature.—State v. Porter, W. Va., 99 S. E. 508.

66.——Easement.—A city acquiring a public street, acquires an easement for every kind of travel, and transportation which is reasonable and proper, and every other reasonable means of transportation beneath the surface, and reasonable use for wires of telegraph, telephone, and electric light companies.—Fox v. City of Hinton, W. Va., 99 S. E. 478.

67.——Governmental Power. — The maintenance, by a municipality, of a large waste-paper box as a receptacle for trash and waste paper, and the removal of its contents by employes of municipality, is a duty connected with the preservation of the public health.—City of Savannah v. Jones, Ga., 99 S. E. 469.

68.——Ordinance.—The fact that the ordinance enlarges upon the provisions of a statute requiring more than the statute requires creates no conflict therewith unless the statute limits the requirements for all cases to its own prescription.—Dowdell v. Beasley, Ala., 82 So. 40.

69.——Rights in Street.—The rights of a horse-drawn vehicle and an automobile proceeding at right angles at the intersection of two streets are reciprocal, and the first at the crossing has the primary right to proceed.—Boggs v. Jewell Tea Co., Pa., 106 Atl. 781.

70. **Partnership**—Implied Authority.—A member of a commercial partnership has no implied authority to bind his partners or the firm by contracts of guaranty or suretyship either for himself individually or for third persons.—First Nat. Bank v. Farson, N. Y., 123 N. E. 490, 226 N. Y. 218.

71.——Voluntary Associations.—The voluntary association of two or more persons to unite their means, skill, and labor to carry on a legal business, or perform a legitimate work constitutes them a partnership.—Duffield v. Reed, W. Va., 99 S. E. 481.

72. **Patents**—Mental Concept.—A conception of the mind is not an invention until represented in some physical form, and unsuccessful experiments or projects abandoned by the inventor are equally destitute of that character.—T. H. Symington Co. v. National Malleable Castings Co., U. S. S. C., 39 S. Ct. 542.

73. **Perpetuities** — Postponed Enjoyment. — Will bequeathing property to named trustees to have full management, control, and sale, with directions to turn proceeds of all property over to certain church when in judgment of trustees the church shall be in need of new church building, did not contravene constitutional inhibition against perpetuities, the property vestng in trustees immediately upon testator's death, in trust for church, and discretionary power given trustees to decide as to time for construction of church building not destroying right of church officers to take proceeds upon need for or propriety of building.—Meadors v. Sherrill, Tex., 212 S. W. 546.

74. **Principal and Agent**—Liability of Agent. —The fact that an agent may be liable does not exempt his principal from liability.—Wynn v. Hoffman, Ala., 82 So. 32.

75.——Undisclosed Principal.—Where an undisclosed principal sues on a contract made by his agent in the agent's name with the defendant, who had no knowledge of the agency, the suit is subject to any defense which the defendant had against agent before notice of the principal's rights.—C. H. Robinson Co. v. Hudgins Produce Co., Ark., 212 S. W. 305.

76. **Quieting Title**—Pleadings.—In an action to quiet title, an allegation that defendant claims an adverse estate or interest is sufficient, without further defining it, to put him to a disclaimer or to allegation and proof of the estate or interest which he claims.—Hammitt v. Virginia Mining Co., Idaho, 181 Pac. 336.

77. **Railroads**—Look and Listen.—Traveler who crosses railroad crossing without either stopping, looking, or listening cannot recover for injuries resulting from simple, initial negligence of trainmen.—Central of Georgia Ry. Co. v. Faust, Ala., 82 So. 36.

78. **Sales**—Blank Forms.—Contract for sale of manufactured products of a company by a local dealer, which contract was drawn upon blank forms of the company, should be construed most strongly against the company.—Well v. Chicago Pneumatic Tool Co., Ark., 212 S. W. 313.

79.——Divisible Contract.—Where seller by single contract sold tractor engine and gang plows, each represented to be perfectly suited to the other for plowing, the fact that seller supplied engine from its house in one state and plows from its house in another state, and that they were ordered on separate blanks, and that separate notes were given for each, did not make contract divisible, in absence of other evidence of such intention.—Hart-Parr Co. v. Duncan, Okla., 181 Pac. 288.

80.——Rescission.—One who was induced by fraud to sell goods to an insolvent corporation does not lose his right to rescind for the fraud by filing notice of lien before he had knowledge of the fraud through the filing of such notice with knowledge of the facts would be a binding election.—In re J. F. Growe Const. Co., U. S. D. C., 256 Fed. 907.

81.——Reserving Title.—Where one sells personal property, taking a purchase money note reserving title in the property until the note is paid, the holder of such note may recover the property in an action of trover, upon failure of maker of note to pay it.—Jordan Mercantile Co. v. Brooks, Ga., 99 S. E. 475.

82.——Return of Property.—The buyer of an article sold, under an agreement that it may be returned if not satisfactory, has the right to return, if his objections are made in good faith and not capriciously.—Randal v. Mitchell Motorcar Co., Pa., 106 Atl. 783.

83. **Specific Performance**—Laches.—The remedy of specific performance must be promptly sought, and where there is an unexplained delay of about five years in bringing action and a further delay of about four years before entry of judgment, the land in the meantime being in possession of third parties, specific performance will not be decreed.—Slimmer v. Martin, N. D., 172 N. W. 829.

84. **Street Railroads**—Ordinary Care.—Where motorman of street car knew, or by ordinary care could have known, of the presence of a wagon driven along the track, and negligently failed to maintain a reasonable lookout, directly resulting in overtaking and colliding with the wagon, the street railway was liable.—Argeropoulos v. Kansas City Rys. Co., Mo., 212 S. W. 369.

85. **Tenancy in Common**—Profits.—Where one tenant in common enters on the common estate, which in its then condition yields no profit, and so improves it as to make it productive, he is entitled to all the profits produced by means of his improvements.—Daniel v. Daniel, Wash., 181 Pac. 215.

86.——Statute of Limitations.—The statute of limitations will not begin to run in favor of a co-tenant in possession of land until notice of his adverse possesion is brought home to his co-owners by acts of such notoriety and conspicuousness as would be calculated to put ordinarily prudent persons on notice of his adverse holding.—Miller v. Powers, Ky., 212 S. W. 453.

87. **Vendor and Purchaser**—Tender of Deed.—A tender of a deed by a purchaser to tne vendor of land is not equivalent to a tender of possession for the purpose of a rescission.—Gregory v. Keeman, U. S. D. C., 256 Fed. 949.

88. **Wills**—"Heirs."—Where a will uses the word "heirs" in its ordinary legal sense, a fee is vested in the first taker under the rule in Shelley's Case.—McClen v. Lehker, Ind., 123 N. E. 475.

89.——Joint Lives.—A will devising land to a son and his wife "during their joint lives," to go to their lawful issue on death of the survivor, indicated a gift to son's wife living at time of execution, and not to one whom he might subsequently marry.—Williams v. Alt, 123 N. E. 499, 226 N. Y. 283.

90.——Testamentary Capacity.—Where in the execution of his will testator knew and understood the business in which he was engaged, he suffered from no lack of testamentary capacity.—Byars v. Smith, Ala., 82 So. 26.

91.——Undue Influence.—Undue influence is that which obtains dominion over mind of the testator and destroys free agency on his part. —Bailey v. Waddy, Ky., 212 S. W. 459.